

MOTIONS OF DISCOVERY

Many criminal justice agencies in Utah have questions about what UCJIS information must be given to defense attorneys upon Motion of Discovery.

Per Utah Department of Public Safety policy, prosecuting attorneys are *not* to provide the results of criminal background checks to defense attorneys if they (the prosecuting attorneys) have not previously ran those background checks for their own purposes.

Utah Rules of Criminal Procedure, Rule 16 states in part: (emphasis added)

- (a) Except as otherwise provided, the prosecutor shall disclose to the defense upon request the following material or information of *which he has knowledge*:
- (1) relevant written or recorded statements of the defendant or codefendants;
 - (2) the criminal record of the defendant;
 - (3) physical evidence seized from the defendant or codefendant;
 - (4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and
 - (5) any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare his defense.

The Utah Computerized Criminal History section of the 2004 BCI Operations Manual (page 4) states:

Prosecutors are required by law to provide *only* information they have obtained for their case. If defense attorneys request any additional UCJIS

information they must obtain a court order signed by the judge and present it to BCI.

Defense attorneys wishing to obtain information that the prosecution has not previously accessed must obtain a court order and then submit the court order to BCI, who will then provide the defense attorney with the requested information.

Courts are responsible for providing the necessary court order. A court cannot force a prosecutor's office to give out information they have not previously accessed for the case in question.

Thus, if the prosecuting attorney has run a UCCH background check on Wally Witness as part of their case, then they must provide the information received on Wally to the defense upon Motion of Discovery. If the prosecuting attorney has *not* run a background check on Wally Witness, then they must *not* provide information on Wally to the defense attorney upon Motion of Discovery. If the defense attorney wishes to receive a UCCH background check on Wally, he will need to get a court order, and then get the information from BCI.



Any time criminal history information is disseminated, the disseminating agency leaves itself liable in the event that the information is disseminated improperly. Prosecuting attorneys who disseminate information that they are not required by law to disseminate are leaving themselves open to litigation

or criminal charges if the requesting defense attorney then distributes the criminal history information improperly.

For further questions regarding the Department of Public Safety's policy regarding Motions of Discovery, please contact Field Services.

NEW USER ACCESS

TACs - When requesting UCJIS access for a new user, make sure that you are including the current background request form or everything will be sent back. The only form BCI will accept is the version found in the Forms Section of the 2004 *BCI Operations Manual*. (Logon_Request_Form) BCI will no longer accept older versions of the form.

Also, please put the agency address and TACs name in the "Employer and Address" field. Often the results of the background check get lost when we send them back to your agency because no one at the agency level knows who to give the results to.

On the logon activation form, there are still some TAC's that are using the option three incorrectly. This is to be used only when the operator will be granted very limited access, or as a supplement to options one or two. If any TAC has questions about this they can e-mail Holly at the TWX e-mail (dpstwx@utah.gov) and she will send them a sample form on how to use the options correctly.

RE-USING WARRANT NUMBERS

Courts must remember to NEVER use the same warrant number twice.



This is especially true of warrants that have been shown as "SERVED" by law enforcement. Once a warrant has been updated to "SERVED" status that court must never use that same warrant number again – even for the same individual.

Reusing a warrant number causes serious problems when a law enforcement agency tries to show that warrant with the duplicate number as "SERVED." Usually, the arresting agency is unable to show the warrant as "SERVED," and BCI or even BCI's MIS department has to step in.

BCI recommends that if you want to use the same warrant number to "track" an individual, you can add an alpha-character to the end of the original warrant number.

For instance, Freddy Fugitive has a warrant with warrant number 04-11111. He's arrested, and that warrant is shown as "SERVED," so you recall it.

However, Freddy once again fails to comply with all the terms of his sentencing, and so you decide that

once again Freddy will be listed on SWW. Instead of re-using 04-11111 you can issue the new warrant under 04-11111A. And if this process repeats itself once again, you can use warrant number 04-11111B, and so on!

COURT SOFTWARE AND IDENTIFYING INFORMATION

It has come to BCI's attention that some court software packages won't allow the court to enter certain identifying information (such as eye color) into a Utah Statewide Warrant. If your software won't let you enter certain fields on a wanted person, you may want to discuss this with your software vendor. The software company should be encouraged to add these identifying fields when they make their next upgrade.

Courts omitting identifying information will be held liable in the event of a false arrest or other problem with the warrant. Stating that your software package didn't allow you to enter the pertinent information will probably not be considered a valid excuse in court!

"CURIOSITY CHECKS"

Just a reminder that UCJIS inquiries are only to be made for criminal justice investigations and criminal justice employment ONLY! "Curiosity Checks" are not valid reasons for accessing UCJIS.

As of August 11, 2004, 364 inquiries by 31 agencies had been made on the names of Mark or Lori Hacking. Only about 5 of those inquiries were made for valid criminal justice investigative purposes. The rest were misuse of the UCJIS system. (...and BCI did send letters to the administrators of those operators who performed the unauthorized checks!)

MISCELLANEOUS FIELD ENTRIES

When entering a person onto NCIC who has a Utah SID number, what code do you put in the MNU field?

Answer: **OA**. (If the person has Utah SID Number 123456 the MNU should read: OA-123456.)

Many agencies are using **PI** instead of **OA**. **PI** should only be used when the Miscellaneous Number is a Utah Identification Card.

SEND IN THOSE FINGERPRINTS! WE MEAN IT!

Don't forget to send in fingerprints for new operators within 30 days of activating a new logon. BCI is now disabling logons if we do not receive an applicant fingerprint card within 30 days. (Don't believe us? We'll put you in contact with some of the 15 operators who had their logons disabled during the first two weeks of August because we never received their fingerprints!)

When we get the prints, we check UCJIS files to see if they contain anything that would deny the operator's UCJIS access. A logon will be denied and disabled if it meets the following criteria.

- Any felony conviction
- Any active warrant
- 3 or more convictions
- Class A misdemeanor in the past 5 years
- Class B or C misdemeanor in the past 3 years.

If the applicant does not agree with the decision he can call 801-965-3832 to appeal the decision and set up an appointment to plea their case in front of a review board. For an overview of the process, please see the flow chart on the last page of the newsletter.

"UNEXPECTED RESULTS" ERROR

Receiving the "Unexpected Results" error when inquiring or entering into NCIC? It could be because you have placed a symbol in the Auditing Purpose field (such as "#"). Remember to never use special characters and avoid all periods when inquiring or entering people into NCIC.

BOOKING REPORTS

Okay...we've downloaded our Booking Report. Now what do we do with it?

Warrants appearing on your Booking Report have been updated to "SERVED" status on the SWW system by a law enforcement agency. It is now up to you to determine what action your court will be taking on each of the warrants on your Booking Report.

First – make sure the warrant was not shown as "SERVED" in error. (This happens!) If it was served in error, contact BCI as soon as possible to have the warrant re-activated.

Second – if the warrant really was served, you must now decide what action you want to take on the warrant. Depending on the circumstances you should recall it, cancel it, or re-activate it. If you decide the person should remain on SWW you can either have BCI re-activate the warrant, or you can cancel the warrant, and then re-enter it *WITH A NEW WARRANT NUMBER*.

Please do not allow a warrant to remain on your Booking Report for more than two weeks.

DISPATCH CENTERS AND CORRECT ORI USAGE

If your agency has access to multiple ORI's on your pull-down menu, please make sure your operators are using the correct ORI for each transaction.

The BCI audits are uncovering situations where requests are ran with the wrong agency's ORI. While we believe that in most of these cases the operator accidentally chose the wrong ORI from the drop-down menu, these situations can still cause problems for all agencies involved, especially if the information received is disseminated improperly.

If your agency relies upon a dispatch center to run your transactions, you will want to run regular internal audits to ensure proper use of your ORI. If you suspect improper use of your ORI please contact the dispatch center or BCI.

RENEWAL DATES ON CCW PERMITS



As was reported in July's Newsletter, BCI is still backlogged on getting out updated renewal permits to concealed weapon permit holders. Thus, some current Utah concealed weapon permits may show on their face that they have expired, even though the actual permit itself has not expired.

However, the "CF" field on the individual's Drivers License screen should show the *correct* date of expiration, even if the actual permit itself is not showing the correct date. (BCI is currently telling permit holders that they can continue to carry using their old permits until the new ones arrive.)

Law enforcement can also contact the BCI Brady section to find out the correct date of expiration. (1-801-965-GUNS)

TAC ADVISORY BOARD

If you have questions, comments, concerns, or suggestions regarding the UCJIS system, please feel free to contact your TAC Advisory Board Member.

The TAC Advisory Board Members work closely with BCI in making improvements to the UCJIS system. We rely heavily on the Advisory Board and the great suggestions they make, so please let them know what's on your mind!

Not sure who your Advisory Board Member is? Each region (or type of agency) has at least one member. They are:

Pat Baxter, Juab County Sheriff; Sheila Bringhurst, Sanpete County Sheriff's Office; Andrea Dall, Farr West City Justice Court; Regina Dekanich, Tooele County Sheriff's Office; Kelly Hansen, Carbon County Justice Court; Jackie Pino, AP&P; Betsy Parenzin, Office of Recovery Services; Margaret Pierson, Uintah Basin Communications; Amanda Peters, Box Elder Communications; Lisa Shook, Price Communications; Valerie Stagg, Corrections; and Charlene Wilde, DCFS.

UCR/IBR

GOLD STAR AGENCIES

The following NIBRS agencies get a well-deserved "Gold Star" for their outstanding error rates!

Between January 2003 and May 2004 **BYU PD** and **East Carbon PD** had no NIBRS errors at all!

Also, in the same time period, the following agencies had an error rate of 0.8% or less: Clearfield PD, Duchesne County SO, Grantsville PD, Layton PD, Logan PD, Naples PD, North Salt Lake PD, Price PD, Roosevelt PD, Sandy PD, South Jordan PD, St George PD, SUU PD, Tooele PD, Vernal PD, West Jordan PD, West Valley PD, and Woods Cross PD. (Among agencies that had submitted a full 17 months of data.)

We appreciate the good job that all of our UCR and NIBRS agencies are doing to provide crime data to the law enforcement community and public at large.

MISSING PERSON INFORMATION

AGE CHANGE FOR MANDATORY ENTRIES

A change implemented August 1, 2004 effects what is considered *mandatory* for NCIC Missing Person entries.



On April 7, 2003, the United States Congress enacted Suzanne's Law which modified Title 42, United States Code, Section 5779(a). In accordance with this change, agencies are now required to immediately enter records into the NCIC Missing Person File for missing juveniles **under the age of 21**. Previously, immediate entry was required for juveniles under age 18.

CHILD ABDUCTION AND AMBER ALERTS

When an agency determines that a child abduction has taken place, or that an Amber Alert needs to be issued, the NCIC entry must be completed as soon as possible. When the entry is started the MNP field should be **CA**. The *NCIC Operations Manual* states:

MISSING PERSON (MNP)

If the MNP is CA, the missing person's age must be less than 18 years of age. The CA is to be used in the MNP field when there is reasonable indication or suspicion that a child has been abducted and/or is missing under suspicious circumstances suggesting foul play or a threat to life. While the CA code is discretionary, every effort should be made to use the code when the criteria are met. The use of this code will give the FBI's National Center for Analysis of Violent Crime (NCAVC) and Strategic Information Center (SIOC), and the National Center for Missing and Exploited Children (NCMEC) notification of urgent cases and enable them to provide assistance if needed.

FORWARD NEWS ITEMS TO: B.C.I., FIELD SERVICES, 3888 W 5400 S, BOX 148280, SALT LAKE CITY UT 84114-8280

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CRITERIA FOR DENIAL

- ANY FELONY CONVICTION
- ANY ACTIVE WARRANT
- 3 OR MORE CONVICTIONS OR RECORDS WITHOUT A DISPOSITION
- ARREST FOR CLASS A MISDEMEANOR IN PAST 5 YEARS
- ARREST FOR CLASS B OR C MISDEMEANOR IN PAST 3 YEARS

